IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.485 OF 2004

Narayan Pandurang Kunjir ...Appellant

Vs.

Dattatraya B. Kunjir & Ors. ...Respondents

Mr.S.J.Rairkar for the Appellant

CORAM: A.S.OKA, J.
DATED: APRIL 6,2005.

P.C.:

1. Heard Shri Rairkar for the Appellant. The Appellant is unsuccessful Plaintiff. The Appellate Court has accepted the case made out by the original Defendant Nos.6 and 7 regarding earlier partition to which effect is given in revenue records by mutation entry.

2. The learned Advocate for the Appellant submitted that there is no admission given by the Constituted Attorney of the Appellant as regards factum of partition and the admission is confined only to the fact of effecting mutation entry. He submitted that even after alleged partition, notice of proceeding under Section 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 was issued in the name of two brothers i.e. the Appellant and the father of Respondent Nos.1 to 5.

3. I have perused the findings recorded by the Appellate Court. I have also perused the relevant part of the deposition of the Constituted Attorney of the Appellant. The Appellate Court is right when the it has recorded a finding that there was a clear admission by the Appellant's son of earlier partition between Bhagwan i.e. father of the Respondent No.1 and the Appellant. In fact, the witness has stated the description of the property allotted to the Appellant in the partition. The admission of the witness is not only as regards the fact of effecting mutation entry but also as regards partition orally effected between the Appellant and his brother. No fault can be found with the findings of fact recorded by the Appellate Court on the basis of the said evidence.

4. Once theory of earlier partition is established, the subsequent act of the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 of issuing notice to both the brothers is of no consequence.

5. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.